

## **Remarks**

Applicants respectfully request reconsideration of the present U.S. Patent application as amended herein. Claims 1, 7, 13 and 17 have been amended. No claims have been added or canceled. Thus, claims 1-18 are pending.

### CLAIM REJECTIONS – 35 U.S.C. § 101

Claims 7-12 and 17 were rejected as being directed to non-statutory subject matter. The definition of computer-readable medium as provided in paragraph 0031 of the specification has been amended to include only tangible storage devices. Claim 17 has been amended to correct a typographical error and depend from claim 13. Accordingly, Applicants submit that the rejection of claims 7-12 and 17 as being directed to non-statutory subject matter have been overcome.

### CLAIM REJECTIONS – 35 U.S.C. § 112, SECOND PARAGRAPH

Claims 1-18 were rejected as being indefinite. The independent claims have been amended to more clearly recite the subject matter of the invention. Accordingly, Applicants submit that the rejection of claim 1-18 as being indefinite has been overcome.

### CLAIM REJECTIONS – 35 U.S.C. § 103(a)

Claims 1-5, 7-11 and 13-17 were rejected as being unpatentable over U.S. Patent No. 6,185,623 issued to Bailey (*Bailey*) in view of U.S. Patent Publication No. 2008/0168157 of Marchand (*Marchand*). For at least the reasons set forth below,

Applicants submit that claims 1-5, 7-11 and 13-17 are not rendered obvious by *Bailey* and *Marchand*.

Claim 1 recites:

receiving, with a server device, a request from a first client device to download a file to be transmitted as a plurality of packets of data from the server device;

multicasting the plurality of packets of data from the server device to multiple client devices, wherein the multiple client devices include at least the first client device;

requesting, when the first client has completed download of the file, from the server device with a second client device from the multiple client devices packets of data not received by the second client device, wherein in the request utilizes a reliable protocol.

Thus, Applicants claim transmitting a file as a plurality of data packets via a multicast protocol. After the requesting client has received the file, another client requests missing packets using a reliable protocol. Independent claims 7 and 13 recite similar limitations.

*Bailey* discloses use of a multicast protocol. Applicants agree with the Office Action that *Bailey* fails to teach or suggest use of a reliable protocol. *Marchand* discloses multicast in multiple stages. Retransmission is also accomplished using multicast protocols. See paragraph 53 and 57. Therefore, neither *Marchand* nor *Bailey*, alone or in combination, can teach or suggest the use of two protocols in the manner recited in the claims.

Claims 2-5 depend from claim 1. Claims 8-11 depend from claim 7. Claims 14-17 depend from claim 13. Because dependent claims include the limitations of the claims from which they depend, Applicants submit that claims 2-5, 8-11 and 14-17 are not rendered obvious by *Bailey* and *Marchand* for at least the reasons set forth above.

Claims 6, 12 and 18 were rejected as being unpatentable over *Bailey* and *Marchand* and further in view of U.S. Patent No. 6,983,334 issued to Riedle (*Riedle*). For at least the reasons set forth below, Applicants submit that claims 6, 12 and 18 are not rendered obvious by *Bailey*, *Marchand* and *Riedle*.

*Riedle* is cited to teach a second device that tracks gaps within a requested file and the size of the packet gaps. See Office Action at page 7. However, *Riedle* does not cure the deficiencies of *Bailey* and *Marchand* as set forth above. Therefore, no combination of *Bailey*, *Marchand* and *Riedle* can teach or suggest the invention as recited in claims 6, 12 and 18.

#### CONCLUSION

For at least the foregoing reasons, Applicants submit that the rejections have been overcome. Therefore, claims 1-18 are in condition for allowance and such action is earnestly solicited. The Examiner is respectfully requested to contact the undersigned by telephone if such contact would further the examination of the present application. Please charge any shortages and credit any overcharges to our Deposit Account number 02-2666.

Respectfully submitted,  
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